

REMARKS

Claims 1-52 remain pending in the application. Claims 13-20 and 33-40 are hereby withdrawn without prejudice or waiver of the right to pursue the subject matter of said claims in this or another application. All other claims remain unchanged. Reconsideration of the pending claims is respectfully requested.

Applicants assume that the rejection of claims 1-20 under 35 U.S.C. §103(a) as being unpatentable over Wong et al. (U.S. Pat. No. 4,783,337) and Theeuwes et al. (U.S. Pat. No. 4,077,407) in combination, and further in view of Faour (U.S. Pat. No. 6,352,721) has been overcome, since said rejection has not been maintained in the most recent office action.

Claims 1-52 stand subject to a restriction requirement under 35 U.S.C. 121 as follows:

- Group I- claims 1-12 (in part), 21-32 (in part) and 41-52 (in part): osmotic device comprising, among other things, an optional drug-containing water soluble and/or erodible coat comprising a second amount of licofelone;
- Group II- claims 1-12 (in part), 21-32 (in part) and 41-52 (in part): osmotic device comprising, among other things, a drug-containing water soluble and/or erodible coat comprising a second amount of licofelone and an inert water soluble and/or erodible coating between the semipermeable membrane and the drug-containing coating;
- Group III claims 13-20 (in part) and 33-40 (in part): a method of use for the osmotic device of Group I; and
- Group IV claims 13-20 (in part) and 33-40 (in part): a method of use for the osmotic device of Group II.

Applicants hereby elect the subject matter of claims 1-12, 21-32 and 41-52 with traverse. In particular, Applicants elect an osmotic device comprising, among things, a drug-containing water soluble and/or erodible coat comprising a second amount of licofelone and an inert water soluble and/or erodible coating between the semipermeable membrane and the drug-containing coating.

Applicants respectfully submit that the restriction requirement is improper as the subject matter of the new claims 21-52 added by way of the amendment filed December 21, 2006 was already present in original claims 1-20 and is merely a subset of said subject matter. Original claim 4, which has already undergone full consideration and substantive examination, already covers an osmotic device as defined by the subject matter of Group II. Original claim 17, which has already undergone full consideration and substantive examination, already covers a method of use as

defined by the subject matter of Group IV. Where claimed subject matter has already undergone substantive examination, issuance of a restriction requirement is improper. Accordingly, election has been fixed by action on the claims. Applicants note that MPEP 803 requires: a) that the inventions be independent or distinct; AND b) there would be a serious burden on examiner if restriction is not required. Since the subject matter of the claims has already been examined, Applicants cannot see how further examination of the same would impose a serious burden upon the examiner. As noted (MPEP 811, 37 CFR 1.142(a)), Examiner has not made a timely restriction requirement "before first office action or as soon as possible thereafter" and has not established that there will be a serious burden if restriction is not required.

Accordingly, Applicants request that the restriction of claims 1-52 under 35 U.S.C. 121 be withdrawn and consideration thereof, as now pending, continue.

Applicants have made a diligent effort to advance the prosecution of the application by amending the claims and presenting arguments in support of patentability. In view of the above, Applicants submit that the claims are in form for allowance. An early notice of allowance thereof is requested.

Respectfully submitted,

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